



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Consider Lease Agreement with Lodi Memorial Hospital for Operation of the Adult Day Care Program and the Camp Hutchins Children's Day Care Program at Hutchins Street Square

MEETING DATE: December 19, 2012

PREPARED BY: Parks, Recreation and Cultural Services Director

RECOMMENDED ACTION: Consider lease agreement with Lodi Memorial Hospital for operation of the Adult Day Care Program and the Camp Hutchins Children's Day Care Program at Hutchins Street Square.

BACKGROUND INFORMATION: The City leases portions of Hutchins Street Square to Lodi Memorial Hospital to operate a child care facility and an adult day care facility for \$1 a year. The adult day care facility dates to 1990, and the child care operation, known as Camp Hutchins, has been a hospital program since 1998.

The most recent lease agreement expired on August 1, 2012.

When the original agreements were signed, the Hutchins Street Square Community Center was a General Fund program. Now it operates within the Parks, Recreation and Cultural Services Department (PRCS) and operates on fee revenue and a fixed General Fund subsidy.

With the Department challenged to become more self-sufficient, the previous director held discussions with Lodi Memorial Hospital representatives regarding payment for electricity and maintenance. Upon expiration of the previous agreement, the Interim Director provided the hospital notice that it would be charged \$198 a month to cover electricity (the amount determined by Lodi Electric Utility based on fixtures and facility use) and \$139.54 a month for the value of weekly garbage service (half of one 4-cubic-yard container) for Camp Hutchins. The fees went into effect September 1, 2012. The annual lease of \$1 per year for the 3,000 square feet did not change. There were no additional fees charged to the Adult Day Care facility.

The attached draft lease proposal largely mirrors the one that recently expired and includes the recent charges. As in the previous agreements, this one has a three-year term and two one-year extensions that automatically renews if neither party gives notice of intent to terminate within 30 days prior to the then-current expiration date. It does not change the \$1 lease rate, however, which places a financial burden on the Parks, Recreation and Cultural Services Department to maintain the facility. For instance, in the 2010/11 fiscal year, the Department spent \$2,422 to replace a worn countertop at Camp Hutchins.

The City built the Senior Center by accepting a bequest from the estate of William G. Holz. Accepting the bequest committed the City to providing a senior center. The bequest, however, has no connection with Camp Hutchins, which serves approximately 60 children.

APPROVED:

A handwritten signature in black ink, appearing to be "Konrad Bartlam".

Konrad Bartlam, City Manager

While the City and Lodi Memorial Hospital have a good relationship in using these facilities, there are several policy questions the City Council should consider with the lease proposed:

- Should PRCS continue providing a rent subsidy for child care services that compete with private providers as well as the Recreation Division's After School Program (which will resume paying \$12,000 rent per site, per year, to Lodi Unified in FY 2013/14)?
- Should PRCS continue absorbing the cost of wear and tear related to the tenant's use while operating Camp Hutchins?
- Should PRCS continue absorbing the cost of wear and tear and utilities related to tenant's use while operating the Adult Day Care Center?

FISCAL IMPACT:

PRCS will continue to absorb the cost of wear and tear to the facilities under this draft agreement and will not have the opportunity to use the Camp Hutchins space for other revenue-generating activities. The draft agreement ensures the City will recover electricity costs and the value of garbage service for Camp Hutchins.

FUNDING AVAILABLE:

Absorbed within 347115 (Hutchins Street Square maintenance).



Jeff Hood
Director

Parks, Recreation and Cultural Services Department

AGREEMENT

THIS AGREEMENT, entered into by and between the CITY OF LODI, a municipal corporation ("City"), and LODI MEMORIAL HOSPITAL ("Hospital").

WHEREAS, the Hospital and the City have a history of partnering with the operation of the Adult Day Care Facility at Hutchins Street Square and Camp Hutchins;

WHEREAS, Lodi Memorial Hospital and the City of Lodi have previously entered into Agreements whereby Hospital leased from City a portion of the Senior Citizen's Complex at Hutchins Street Square and the western portion of the remodeled multi-purpose building at Hutchins Street Square.

WHEREAS, the purpose of this Agreement is to continue these relationships through a contract that will run for three (3) years from the date this Agreement with the option of two (2) one-year (1) extensions.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. The purpose of this Agreement is to provide an adult day care facility and children's day care on a year-round basis at the Hutchins Street Square facility.
2. The City of Lodi will lease to Lodi Memorial Hospital for the sum of ONE DOLLAR (\$1.00) each year, payable in advance on the anniversary date of this Agreement, the facilities and spaces described as follows:

Adult Day Care Center

The southern portion of the remodeled Senior Citizen's Complex at Hutchins Street Square, as more particularly shown on the floor plan attached hereto and made a part of this Agreement by reference.

-AND-

Camp Hutchins

The western portion of the remodeled multi-purpose building at Hutchins Street Square, as more particularly shown on the floor plan attached hereto and made a part of this Agreement by reference.

3. The term of this Agreement shall be for a period of three (3) years commencing February 1, 2013 and expiring on February 1, 2016. This Agreement may be terminated with or without cause by either party by providing not less than thirty (30) days advance written notice to the other party. This Agreement will extend automatically for two successive one year periods if neither party gives notice of intent to terminate thirty (30) days prior to the then current expiration date.
4. Hospital agrees to operate an adult day care program and a child care program during hours mutually agreeable to the parties, Monday through Friday, fifty-two weeks of the year, save and except the usual and traditional holidays. Such services shall be available to all persons otherwise meeting the criteria for participation in such day care facilities, regardless of race, color, religion, sexual orientation, marital status, national origin, ancestry, age, residency or any other criteria prohibited by law.
5. All kitchen appliances, if any, shall be provided, owned, and maintained by Hospital, which shall furnish to the City a list of, and specifications for, all such appliances prior to installation. A list of the kitchen appliances installed by Hospital prior to execution of this Agreement has been provided by Hospital.

6. Hospital shall provide all necessary and customary equipment, furniture, and staff to provide care for a maximum of thirty (30) persons in the Adult Day Care program and shall provide all necessary and customary equipment, furniture, and staff to provide care for a maximum of fifty-six (56) children in Camp Hutchins.
7. Hospital shall be responsible for publicity and marketing of the programs, and expending reasonable and good faith efforts to make the public aware of these programs. Fees will be established by Hospital in accordance to area market value.
8. The leased premises (as described in paragraph 2) will be available to the City "after hours" and on weekends for outside rental and joint uses of the rooms for various community and civic activities.
9. City shall provide all customary and usual maintenance of buildings and grounds. Lodi Memorial Hospital shall be responsible for all janitorial and cleaning services for the interior of the space described in paragraph 2.
10. City shall be obligated only to provide the necessary space and maintenance for such day care centers. All other expenses of operation of the day care programs shall be the responsibility of Hospital. Hospital further agrees to operate such Adult Day Care program and Camp Hutchins program on a not-for-profit basis. Charges or fees for such services shall be adjusted with the intent to make such charges or fees reflect the actual cost of operation and overhead of the facility. In determining or calculating profit or loss, Hospital shall be entitled to depreciate during the term of this Agreement the cost for any necessary equipment provided during the term by Hospital. Determination of profit or loss may utilize or carry forward/carry back method of calculating profit or loss for each year of the three (3) year term of this Agreement and offset for each year in which a loss was incurred against any year of the current term in which a profit resulted. Should an overall profit result as shown by independent audit based on the considerations found in this paragraph, then at the end of the three (3) year term, it shall be paid and remitted to the City of Lodi, for the purpose of continued maintenance and development of the facility. The provisions of the paragraph shall apply to any extension of the original term of this Agreement as described in paragraph 3.
11. The Hospital shall pay the City \$198 per month for electricity and \$139.54 per month for garbage pickup for Camp Hutchins. The electricity and garbage rates are subject to annual adjustment by The City of Lodi in the event of a rate change or in the event of increased demand by Hospital. The garbage pickup adjustments shall be based on one-half the cost of weekly pickup of a 4-cubic yard container.
12. INDEMNITY: Hospital agrees to indemnify and hold harmless City and its officers, agents and employees from and against all claims of whatever nature arising from any act, omission, or negligence of Hospital or Hospital's contractors, licensees, agents, servants, or employees, or arising from any accident, injury, or damage whatsoever caused any person, or to the property of any person, occurring during the term hereof, in or about the demised premises where such accident, damage, or injury, including death, results, or is claimed in whole or in part to have resulted, from any act or omission on the part of Hospital or Hospital's agents or employees. This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including attorney's fees incurred in or in connection with any such claim or proceeding brought thereon and the defense thereof.
13. GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE: Hospital agrees to maintain in full force during the term hereof a policy of general liability insurance under which Hospital is named as insured, and containing an additional named insured endorsement naming City, its elected and appointed boards, commissions, officers,

agents, employees and volunteers as additional insured, and under which the insurer agrees to indemnify and hold Hospital and City harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal injuries, including death, sustained in accidents occurring in or about the premises, where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the part of Hospital, or Hospital's agents or employees. The minimum limits of such insurance shall be \$5,000,000 (five million dollars). In addition to the additional named insured endorsement on Hospital's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Insurance as is afforded by the endorsement for additional insured shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

14. A duplicate or certificate of said public liability and property damage insurance policy containing the above-stated required endorsement shall be delivered to City within ten (10) days after the issuance and each renewal of said policy.
15. Hospital shall take out and maintain during the term of this Agreement, Worker's Compensation Insurance for all of the Hospital's employees employed to perform work in the programs described herein. A waiver of subrogation for workers compensation is required.
16. In the event of a cessation or abandonment of either of the adult day care center or the child care program by Hospital for a period exceeding thirty (30) days, City may, in its sole discretion, deem this Agreement null and void.
17. Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight deliver, postage prepaid, or in three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

City shall be: City Manager
 P.O. Box 3006
 Lodi, CA 95241-1910

With a copy to: Community Center Director
 Hutchins Street Square
 125 S. Hutchins Street
 Lodi, CA 95240

Hospital shall be: Lodi Memorial Hospital
 Hospital Administrator
 975 South Fairmont Ave
 Lodi, CA 95240

18. This Agreement shall be construed in accordance with the laws of the State of California.
19. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

20. This Agreement constitutes the entire understanding and agreement between the parties hereto. There shall be no modifications without the written consent of both parties.

Executed this ____ day of February, 2013 at Lodi, San Joaquin County, California.

CITY OF LODI, a municipal corporation

LODI MEMORIAL HOSPITAL

Konradt Bartlam
City Manager

Joseph Harrington
Administration

ATTEST:

Randi Johl
City Clerk

Dated: _____

Approved **as** to Form:
D. Stephen Schwabauer
City Attorney

By: Janice D. Magdich
Deputy City Attorney

